

Message Text

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SUBJECT: DIPLOMATIC CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW

1. COMMITTEE I OF DIPLOMATIC CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW ADOPTED BY CONSENSUS ON MARCH 14, AFTER SEVERAL WEEKS OF NEGOTIATION, KEY ARTICLE ON PROTECTING POWERS AND SUBSTITUTES. ADOPTION OF SUCH ARTICLE HAS BEEN IMPORTANT USG OBJECTIVE SINCE WORK ON INTERNATIONAL HUMANITARIAN LAW BEGAN AT EXPERTS MEETINGS IN 1971. ESPECIALLY IN VIEW OF OUR EXPERIENCE IN VIETNAM, WE HAVE CONSIDERED THAT BETTER IMPLEMENTATION OF EXISTING INTERNATIONAL HUMANITARIAN LAW A NECESSARY STARTING POINT IN THE REAFFIRMATION AND DEVELOPMENT OF THE LAW; THIS DEPENDS IN GOOD PART ON EFFECTIVE SUPERVISION, WHICH IS THE TASK OF THE PROTECTING POWER SYSTEM. THE ARTICLE THAT WAS ADOPTED IS DESIGNED TO INCREASE LIKELIHOOD THAT PROTECTING POWER OR SUBSTITUTE WILL IN FACT BE APPOINTED.

2. NEW ARTICLE, WHICH IS REPRODUCED BELOW, CLEARLY SETS FORTH DUTY OF PARTIES TO SECURE THE SUPERVISION AND IMPLEMENTATION OF THE GENEVA CONVENTIONS OF 1949 ON PROTECTION OF WAR VICTIMS AS WELL AS OF NEW ADDITIONAL PROTOCOL BY THE APPLICATION OF THE SYSTEM OF PROTECTING POWERS. A PROCEDURE IS SET FORTH BY WHICH THE ICRC CAN
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OFFER ITS GOOD SERVICES TO AID IN THE APPOINTMENT OF

PROTECTING POWERS. IN ADDITION, PARA 4 OF ARTICLE PROVIDES THAT PARTIES TO THE CONFLICT SHALL ACCEPT AN OFFER MADE BY ICRC OR OTHER ORGANIZATION WHICH OFFERS ALL GUARANTEES OF IMPARTIALITY AND EFFICACY TO ACT AS SUBSTITUTE FOR PROTECTING POWER. THIS IS CRUCIAL OBLIGATION THAT PROVIDES A FINAL FALLBACK TO ENSURE THAT SYSTEM WILL WORK. (WE DID NOT DESIRE SECOND SENTENCE IN PARA 4, WHICH WAS INSISTED ON BY EES; HOWEVER, SINCE WE THOUGHT IT OBVIOUS THAT WAY IN WHICH A SUBSTITUTE THAT HAS BEEN ACCEPTED FUNCTIONS REQUIRES THE COOPERATION AND CONSENT OF PARTIES, WE SAW NO GREAT HARM IN ITS INCLUSION.)

3. FOLLOWING IS TEXT OF ARTICLE ADOPTED BY COMMITTEE I:

"ARTICLE 5 (APPOINTMENT OF PROTECTING POWERS AND OF THEIR SUBSTITUTE)

"1. IT IS THE DUTY OF THE PARTIES TO A CONFLICT FROM THE BEGINNING OF THAT CONFLICT TO SECURE THE SUPERVISION AND IMPLEMENTATION OF THE CONVENTIONS AND THE PRESENT PROTOCOL BY THE APPLICATION OF THE SYSTEM OF PROTECTING POWERS, INCLUDING INTER ALIA THEIR DESIGNATION AND ACCEPTANCE, IN ACCORDANCE WITH THE FOLLOIWNIG PARAGRAPHS. SUCH POWERS SHALL HAVE THE DUTY OF SAFEGUARDING THE INTERESTS OF THE PARTIES TO THE CONFLICT.

"2. FROM THE BEGINNING OF A SITUATION REFERRED TO IN ARTICLE 1 OF THE PRESENT PROTOCOL, EACH PARTY TO THE CONFLICT SHALL WITHOUT DELAY DESIGNATE A PROTECTING POWER FOR THE PURPOSE OF APPLYING THE CONVENTIONS AND THE PRESENT PROTOCOL AND SHALL WITHOUT DELAY AND FOR THE SAME PURPOSE PERMIT THE ACTIVITIES OF A PROTECTING POWER WHICH HAS BEEN ACCEPTED BY IT AS SUCH AFTER DESIGNATION BY THE ADVERSE PARTY.

"3. IF A PROTECTING POWER HAS NOT BEEN DESIGNATED OR ACCEPTED FROM THE BEGINNING OF A SITUATION REFERRED TO IN ARTICLE 1 OF THE PRESENT PROTOCOL, THE INTERNATIONAL COMMITTEE OF THE RED CROSS, WITHOUT PREJUDICE TO THE RIGHT OF ANY OTHER IMPARTIAL HUMANITARIAN ORGANIZATION TO DO LIKEWISE, SHALL UNCLASSIFIED

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OFFER ITS GOOD OFFICES TO THE PARTIES TO THE CONFLICT WITH A VIEW TO THE DESIGNATION WITHOUT DELAY OF PROTECTING POWERS TO WHICH THE PARTIES TO CONFLICT CONSENT. FOR THAT PURPOSE IT MAY, INTER ALIA, ASK EACH PARTY TO PROVIDE IT WITH A LIST OF AT LEAST FIVE STATES WHICH THAT PARTIES CONSIDERS ACCEPTABLE TO ACT AS PROTECTING POWER ON ITS BEHALF IN RELATION TO ANOTHER PARTY TO THE CONFLICT AND ASK THE OTHER PARTY TO PROVIDE A LIST OF

AT LEAST FIVE STATES WHICH IT WOULD ACCEPT TO FULFIL THIS FUNCTION; THESE LISTS SHALL BE COMMUNICATED TO IT WITHIN TWO WEEKS FOLLOWING THE RECEIPT OF THE REQUEST; IT SHALL COMPARE THEM AND SEEK THE AGREEMENT OF ANY PROPOSED STATE NAMED ON BOTH LIST.

"4. IF, DESPITE THE FOREGOING, THERE IS NO PROTECTING POWER, THE PARTIES TO THE CONFLICT SHALL ACCEPT WITHOUT DELAY AN OFFER WHICH MAY BE MADE BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS OR BY ANY OTHER ORGANIZATION WHICH OFFERS ALL GUARANTEES OF IMPARTIALITY AND EFFICACY, AFTER DUE CONSULTATIONS WITH THE SAID PARTIES AND TAKING INTO ACCOUNT THE RESULT OF THESE CONSULTATIONS, TO ACT AS A SUBSTITUTE. THE FUNCTIONING OF SUCH A SUBSTITUTE IS SUBJECT TO THE CONSENT OF THE PARTIES TO THE CONFLICT; ALL EFFORTS SHALL BE MADE BY THE PARTIES TO FACILITATE THE OPERATION OF A SUBSTITUTE IN FULFILLING ITS TASKS UNDER THE CONVENTIONS AND THIS PROTOCOL.

"5. IN ACCORDANCE WITH ARTICLE 4, THE DESIGNATION AND ACCEPTANCE OF PROTECTING POWERS FOR THE PURPOSE OF APPLYING THE CONVENTIONS AND THE PRESENT PROTOCOL SHALL NOT AFFECT THE LEGAL STATUS OF THE PARTIES TO THE CONFLICT OR OF ANY TERRITORY, INCLUDING OCCUPIED TERRITORY.

"6. THE MAINTENANCE OF DIPLOMATIC RELATIONS BETWEEN PARTIES TO THE CONFLICT OR THE ENTRUSTING OF THE PROTECTION OF A PARTY'S INTERESTS AND THOSE OF ITS NATIONALS TO A THIRD STATE ACCORDING TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS DOES NOT CONSTITUTE AN OBSTACLE TO THE APPOINTMENT OF PROTECTING POWERS FOR THE PURPOSE OF APPLYING THE CONVENTIONS AND THE PRESENT PROTOCOL.
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"7. WHEREVER HEREAFTER IN THE PRESENT PROTOCOL MENTION IS MADE OF A PROTECTING POWER, SUCH MENTION ALSO INCLUDES ANY SUBSTITUTE." DALE

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